

**RESOLUTION NO. 2021-50**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AND ACCEPTING A PUBLIC BEACH ACCESS EASEMENT AND DEDICATION AGREEMENT WITH THE SANDS OF KEY BISCAYNE CONDOMINIUM ASSOCIATION, INC. RELATING TO THE PROPERTY LOCATED AT 605 OCEAN DRIVE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne ("Village") desires to be accepted into the U.S. Army Corps of Engineers feasibility study for entry into the long term (50-year) federal shoreline protection program (the "Re-Nourishment Program"); and

**WHEREAS**, as a condition of the Re-Nourishment Program, the Village is required to ensure that the general public has access to the beaches located within the Village at certain designated intervals; and

**WHEREAS**, The Sands of Key Biscayne Condominium Association, Inc. has voluntarily agreed to grant the Village a public beach access easement entitled "Public Access Easement and Dedication Agreement" (the "Easement") on the property located at 605 Ocean Drive; and

**WHEREAS**, the Village Council desires to approve and accept the Easement, in substantially the same form attached hereto as Exhibit "A"; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**


**Section 1. Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Easement Approved and Accepted.** The Village Council hereby approves and accepts the Easement, in substantially the form attached hereto as Exhibit "A," subject to the Village Attorney's approval as to form, content and legal sufficiency.

**Section 3. Implementation.** The Village Manager is hereby authorized to take any and all steps necessary to implement the intent and purpose of this Resolution.

**Section 4. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 12<sup>th</sup> day of October, 2021.


  
\_\_\_\_\_  
MICHAEL W. DAVEY, MAYOR

ATTEST:

  
\_\_\_\_\_  
JOCELYN B. KOCH  
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMANN, P.L.  
VILLAGE ATTORNEY

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Eduardo M. Soto, Esq.  
Weiss Serota Helfman  
Cole & Bierman, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134

CFN 2021R0764368  
OR BK 32790 Pgs 2505-2511 (7Pgs)  
RECORDED 10/13/2021 13:30:47  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

For Recording Purposes Only

**PUBLIC ACCESS EASEMENT  
AND DEDICATION AGREEMENT**

**THIS PUBLIC ACCESS EASEMENT AND DEDICATION AGREEMENT**  
(this "Agreement") is made this 13<sup>th</sup> day of October, 2021, by The Sands of Key Biscayne Condominium Association, Inc., a Florida non-profit corporation, (hereinafter referred to as the "Grantor"), and the Village of Key Biscayne, a Florida municipal corporation (hereinafter referred to as the "Village").

**RECITALS:**

1. Grantor owns fee simple title to certain real property located in Miami-Dade County, Florida, and more specifically within the boundaries of the Village, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Easement Area");
2. The Village has determined that its beaches are in need of re-nourishment and in connection therewith has requested federal assistance ("Re-Nourishment Program");
3. As a condition of the Re-Nourishment Program, the Village is required to ensure that the general public have access to the beaches located within the Village ("Village Beaches") at certain designated intervals;
4. The Village has determined that the Easement Area is a suitable access point as required by the Re-Nourishment Program;
5. Grantor has agreed to grant the general public access to the Village Beaches subject to the Village undertaking the obligations as set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises and the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of



which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals.** The parties acknowledge that the foregoing recitals are true and correct and are hereby incorporated into this Agreement as is fully set forth herein.

2. **Dedication of Beach Access Easements.** Grantor does hereby dedicate, grant and convey to the Village, the Easement Area as described on Exhibit A attached hereto, for the benefit of the general public, for the purposes of pedestrian and bicycle ingress and egress to and from the Village Beaches or Atlantic Ocean, allowing for the use and benefit of the Village Beaches, including the right of access and ingress and egress for maintenance vehicles for Village Beach maintenance and re-nourishment, and emergency vehicles and Village operations for public, health, safety and welfare purposes. Maintenance vehicles on the Easement Areas for routine (daily or weekly) beach maintenance purposes shall be limited to All Terrain Vehicles (ATV) and/or similar vehicles. In connection with non-routine beach re-nourishment performed by the Village, the Village (and/or its contractor or vendor) may utilize larger vehicles, as necessary with advance reasonable notice provided to Grantor. The Village acknowledges that a fence currently encroaches into the Easement Area which the Village shall not disturb or otherwise remove; provided however that the encroachment shall not be rebuilt in the event it is destroyed by casualty.

3. **Purpose and Use of Beach Access Dedication/Easement.** The intent and purpose of the dedication granted to the Village on the Easement Area is to provide exclusive and perpetual unrestricted and year-round pedestrian, bicycle and limited vehicular access to and from the beach or Atlantic Ocean to the Village, for the use and benefit of its residents and all users or parties designated by the Village, as well as the right of access and ingress and egress for maintenance vehicles for beach maintenance and re-nourishment, and emergency vehicles and Village operations for public, health, safety and welfare purposes. The Village shall have the right to temporarily close and/or restrict use and access of the Easement Area, including closures for beach maintenance and re-nourishment purposes, provided, the Village provides Grantor with written advance reasonable notice of such closure (and in the event of emergency situations requiring immediate closure, no notice by the Village shall be required). Notwithstanding the foregoing, vehicular access shall be limited to maintenance, re-nourishment, emergency situations, and access for individuals with disabilities only.

4. **Improvements to Beach Easement Areas; Maintenance and Repair.** Village shall install and construct, at its sole cost and expense, certain improvements on the Easement Area, to make the Easement Area suitable for pedestrian, bicycle and limited vehicular (golf cart) (as per 3. above) access, including (a) installation of a paved path and/or walkway on the Beach Easement Areas; (b) landscaping; (c) fencing, and (d) limited lighting as approved by applicable governmental and permitting agencies (the improvements described in (a), (b), (c) and (d) above shall be hereinafter collectively referred to as the "Improvements"). The Village shall maintain and repair the Easement Area and the Improvements, at its sole cost and expense, in safe and good working condition and such that pedestrian and vehicular access is not impaired or obstructed. The Village shall keep the Easement Area and Improvements clear and free of trash, debris and rubbish and free of obstructions of every nature, and shall provide adequate drainage and lighting thereon. No walls, fences, barriers, building, structure or any other sort of temporary or permanent obstruction shall be constructed or erected on or over the Easement Area





that would impede, impair, block or obstruct any portion of the Easement Area or prevent or limit the reasonable movement of pedestrians and vehicles on the Easement Area and access to and from the Village Beach or Atlantic Ocean. The Village agrees that prior to the installation of any improvements to the Easement Area, it will submit all proposed improvements to the Grantor and to the extent possible, incorporate any reasonable revisions to said proposed improvements provided that so long as the improvements are consistent with the current architecture of the Easement Area, the Village may install such improvements.

5. **Incidental Rights.** The rights granted herein to the Village shall likewise include all incidental rights reasonably necessary for the use and enjoyment of such rights and such incidental rights are hereby created, granted, and declared.

6. **Amendment.** This Agreement shall not be changed, amended, or modified except by an instrument in writing, executed by the parties to this Agreement.

7. **Duration.** The easement rights contained herein shall be perpetual, but may be terminated by the Village, in its sole discretion, but only in the event that in the event there is no federal assistance provided with respect to the Re-Nourishment Program, and the Village council approves such termination after a public hearing.

8. **Covenants Running with the Land; Successors and Assigns.** It is intended that each of the dedications, easements, covenants, conditions, restrictions, rights, and obligations set forth herein shall run with the land of Grantor and create an equitable servitude in favor of the Village, its successors and/or assigns, and shall bind Grantor, its successors and assigns (including any condominium association and/or or unit owners owning, operating or maintaining any part of the Easement Area as part of a condominium).

9. **Enforcement.** The Village and Grantor shall each have the right to pursue and legally enforce this Agreement and the dedications, easements, covenants, conditions, obligations and restrictions set forth herein, including, but not limited to, all maintenance obligations of the Village on the Easement Area and repair obligations of the Village set forth in this Agreement, by whatever action or actions are legally available, including without limitation, any equitable remedy, injunction or specific performance. The Village and Grantor shall have the right, but shall not be obligated, to take such action as shall be reasonably necessary to cure any default of this Agreement and enforce the dedications, easements, covenants, conditions, obligations and restrictions set forth herein, at the sole cost and expense of the violating party.

10. **Attorney's Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its cost and reasonable attorney's fees incurred in the preparation and prosecution of such action or proceeding.

11. **Severability.** Each provision of this Agreement is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision in this Agreement is held to be depended upon the



existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

12. **Governing Laws.** The laws of the State of Florida shall govern the interpretation, validity, performance, and enforcement of this Agreement. Venue shall be in Miami-Dade County Florida.

13. **Notices.** All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); five days after being sent, if sent by certified or registered mail for each party indicated below and addressed as follows:

**To Grantor:** The Sands of Key Biscayne  
Condominium Association, Inc.  
605 Ocean Drive, Management Office  
Key Biscayne, Florida 33149

**With a copy to:** Gary M. Mars, Esq.  
Siegfried Rivera  
201 Alhambra Circle, 11<sup>th</sup> Floor  
Coral Gables, Florida 33134

**To Village:** Village Manager  
88 W. McIntyre Street  
Key Biscayne, Florida 33149

**With a copy to:** Village Attorney  
Weiss Serota Helfman  
Cole & Bierman, P.L.  
2525 Ponce de Leon Blvd. Suite 700  
Coral Gables, Florida 33134

14. **Warranties and Representations.** Grantor does hereby covenant and represent to Village that it is lawfully seized and possessed of the Easement Area.

15. **Indemnification for Beach Maintenance and Re-Nourishment; Gate and Access Control System.** Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended from time to time), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Village shall indemnify and hold harmless Grantor, and its successors and/or assigns, from and against all costs, expenses, losses, claims or damages, including reasonable attorneys' fees and costs at trial and appellate levels, relating to death or personal injury to persons, or loss of or damage to property, resulting from, arising out of, or incurred in connection with beach maintenance and re-nourishment operations performed by the Village on the Easement Area, or

in connection with the installation, operation and maintenance by the Village of any gate or access control system installed by the Village on the Easement Area, except any and all costs, expenses, losses, claims or damages, resulting from, arising out of, or incurred in connection any acts or omissions, including intentional and negligent acts, of Grantor or any of its officers, guests, invitees, employees, agents or contractors. Additionally, the Village agrees to indemnify and hold harmless Grantor, and its successors and/or assigns from and against all costs, expenses, losses, claims or damages, including reasonable attorney's fees and costs at the trial and appellate levels in connection with any litigation, actions, demands, costs, expenses, losses claims or damages arising out of or in connection with Grantor's entry of the subject Agreement with the Village, and in connection with the easement rights contained herein, including but not limited to any claims challenging the Association's authority to enter into the subject Agreement and easement.

**16. Ocean Drive Parking.** The Village shall not expand or otherwise amplify parking for motor vehicles of any kind on Ocean Drive from Galen Drive to the Beach Park maintained and operated by the Village during the term of the Easement without Grantor's consent.

**[SIGNATURE PAGES TO FOLLOW]**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**GRANTOR:**

WITNESSES:

Print Name: Elena Palacios J.

Print Name: Abiram Sanchez

By: [Signature]

Name: Samuel L. Schrager

Title: President

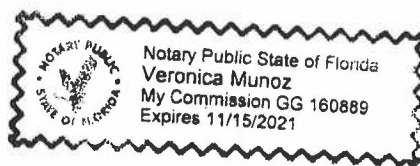
STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 5<sup>th</sup> day of October 2021, by Samuel L. Schrager, as President, on behalf of The Sands of Key Biscayne Condominium Association, Inc. He/she ☒ is personally known to me or [ ] produced \_\_\_\_\_ as identification.

[SEAL]

[Signature]  
Notary Public, State of Florida

Commission expires: 11-15-21





VILLAGE:

VILLAGE OF KEY BISCAYNE a Florida  
municipal corporation

WITNESSES:

[Signature]

Print Name: Jocelyne Maussana

By: [Signature]  
Name: STEVEN C. WILLIAMSON  
Title: VILLAGE MANAGER

[Signature]

Print Name: Roland Samimy

Attest:

Jocelyn B Koch  
Village Clerk



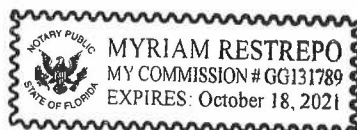
Approved as to Form and Legal Sufficiency:

[Signature]  
Village Attorney

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me by means of ☒ physical presence  
or ☐ online notarization this 13<sup>th</sup> day of October 2021, by Steven C. Williamson of the  
Village of Key Biscayne, a Florida municipal corporation, on behalf of the corporation. He ☒ is  
personally known to me or ☐ produced \_\_\_\_\_ as identification.

[SEAL]



[Signature]  
Notary Public, State of Florida

Commission expires: October 18, 2021

STATE OF FLORIDA, COUNTY OF MIAMI-DADE  
I HEREBY CERTIFY that this is a true copy of the  
original filed in this office on OCT 13 2021 day of AD 20

WITNESS my hand and Official Seal  
HARVEY RUVIN, Clerk of Circuit and County Courts  
By [Signature] D.C.

JESSIE MERRITT #310229

